IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.R.C.No.294 of 2011

G.Murugan .. Petitioner/Accused

Vs.

Inspector of Police,
District Crime Branch,
Vellore District.
(Crime No.2 of 2008). .. Respondents/Complainant

PRAYER: The Criminal Revision has been filed under Section 397 (1) read with 401 of Criminal Procedure Code to set aside the judgment passed in C.A.No.94 of 2010 dated 30.11.2010 on the file of Additional Session Judge-cum-Fast Track Court, Vellore, in awarding simple imprisonment for three months and to pay a fine of Rs.500/-.

For Petitioner : Mr.S.Thiruvengadam

For Respondent : Mr.G.Ramar
Govt. Advocate (Crl. Side)

O R D E R

The present Criminal Revision has been filed against the judgment passed by the Additional Session Judge-cum-Fast Track Court, Vellore, C.A.No.94 of 2010 dated 30.11.2010, in awarding simple imprisonment for three months and to pay a fine of Rs.500/-.

2. Heard the learned counsel appearing for the petitioner and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent.

3. It is the case of the prosecution that the father of the accused was Special Sub Inspector of Police in Tamil Nadu Police and had died in harness, pursuant to which, the accused was called upon to submit an application for appointment on compassionate ground.

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4. The accused had not passed SSLC Examination and was therefore, ineligible for appointment even on compassionate ground. Therefore, he forged his SSLC mark sheet (Ex.P4) and submitted the same to the authorities along with an application for appointment on compassionate ground. When the authorities cross verified the documents submitted by the accused, the forgery came to light.

5. Hence, on the complaint (Ex.P1) lodged by Dayalan (P.W.1), a case in Crime No.2 of 2008 was registered and after completing the investigation, the police filed final report in C.C.No.33 of 2009 before the Judicial Magistrate No.II, Vellore, for the offences punishable under Sections 465, 468, 471 and 420 IPC against the accused. The accused pleaded not guilty to the charges.

6. To prove the case, the prosecution examined six witnesses and marked 12 exhibits. On the side of the accused, no witness was examined nor any document marked.

7. After considering the evidence on record, the trial Court convicted the accused for the offences under Sections 465, 468, 471 and 420 IPC and sentenced him to undergo six months Rigorous Imprisonment for each offence. The sentences were directed to run concurrently. The trial Court also imposed a fine of Rs.500/-, in default, to undergo simple imprisonment for three months each for the offences under Sections 465, 468, 471 and 420 IPC. Challenging the conviction and sentence, the accused filed Crl.A.No.94 of 2010 before the Court of Session. When he tendered unconditional apology and prayed for leniency in sentence, the lower appellate Court accepted the apology and reduced the sentence from six months rigorous imprisonment to three months rigorous imprisonment. Not satisfied with that, the accused is now before this Court in this Revision Petition.

8. Mr.Thiruvengadam, learned counsel appearing for the accused argued the case on merits and submitted that the conviction and sentence by the trial Court is not sustainable.

9. One Dayalan (P.W.1), Personal Assistant to the Superintendent of Police, Vellore District, has, in his evidence, stated that the accused submitted an application dated 16.04.2001 seeking appointment on compassionate ground pursuant to the death of his father Ganesan, Special Sub Inspector of Police in harness; along with the application, he submitted his SSLC mark sheet; by the proceedings Na.Ka.No.1433/CA-1/05-03, dated 13.07.2005 of the Director General of Police, Chennai, the accused was given appointment on 17.10.2005 as Computer Operator in Vellore South Police

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Station; the mark sheet submitted by him was routinely sent to the office of the Secretary, Board of Secondary Education, Chennai, for verification; the State Education Board sent a communication dated 23.04.2007 stating that the mark sheet bearing Reg. No.540032 has been fabricated inasmuch as the marks in Tamil and English have been shown as 44 and 48 respectively, whereas, the candidate had secured only 24 marks in Tamil and 18 marks in English. The minimum qualification for appointment as Computer Data Entry Operator is a pass in SSLC Examination, but, the actual marks secured by the accused show that he had not cleared the SSLC Examination and therefore, the appointment of the accused was cancelled as per the order dated 25.08.2007 in Na.Ka.A.2/21332/275/2007.

10. The witness was subjected to cross-examination and it was suggested to him that the accused had not submitted the forged mark sheet and it was substituted by the authorities themselves, which suggestion, the witness denied.

11. In order to prove that the SSLC mark sheet (Ex.P4) was forged, the prosecution examined Senthamil Selvi (P.W.2), the Joint Director of Tamil Nadu School Education Department, who stated that her office received the requisition letter from the office of the Superintendent of Police, Vellore, to verify the genuineness of the mark sheet of the candidate by name Murugan; on verification, it was found that the mark sheet bearing Reg. No.540032 was not issued by the Department. The impugned mark sheet was marked as Ex.P4 and the report dated 23.04.2007 submitted by her was marked as Ex.P5. In the cross-examination, it was suggested that she had given a report without proper verification of the records, which suggestion, she denied.

12. The trial Court and the lower appellate Court have appreciated the evidence of the prosecution witnesses, especially Dayalan (P.W.1) and Senthamil Selvi (P.W.2) and held on facts that the accused had submitted a forged mark sheet for getting appointment on compassionate ground. These witnesses have no personal axe to grind against the accused for them to falsely depose. While exercising the power under Section 397 read with 401 Cr.P.C, this Court cannot re-appreciate the evidence like a second appellate Court. At this juncture, it may be profitable to refer to the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659], the relevant portion of which reads as under:-

> "22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the

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High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

> "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

(emphasis supplied)

13. On a perusal of the evidence on record, this Court does not find any impropriety or illegality in the judgments passed by the trial Court and the lower appellate Court warranting interference.

14. Coming to the sentence, Mr.S.Thiruvengadam, learned counsel for the accused pleaded for further leniency and for reducing the sentence to the period already undergone. The learned Government Advocate (Crl.Side) produced records from the Central Prison, Vellore, which shows that the accused was imprisoned from 04.02.2011 to 02.03.2011 (27 days).

15. The facts obtaining in A.S.Krishnan and Another Vs. State of Kerala (AIR 2004 SC 3229) are similar to the facts obtaining in this case. The accused in that case had submitted forged mark sheet and had secured admission to M.B.B.S. course. He was convicted and sentenced to undergo one year rigorous imprisonment, which was reduced to three months by the High Court. On appeal, the Supreme Court has observed as follows in paragraph No.13:

> "13. So far as the question of sentence is concerned, we find that the High Court has already taken a liberal view so far as A-2 is concerned. In a case when students use forged mark sheets to obtain admission thereby depriving eligible candidates to get seats and that too to a medical course and a doctor is involved in the whole operation, uncalled for leniency or undue sympathy will be misplaced and

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actually result in miscarriage of justice. Such types of crimes deserve as a matter of fact, deterrent punishment in the larger interests of society. If at all, the case calls for severe punishment. We find no substance in the plea relating to sentence or extending the benefits of the Probation Act. The appeal fails and is dismissed."

In this case also the lower appellate Court has shown sufficient leniency by reducing the sentence to three months rigorous imprisonment and further reduction will not be appropriate.

16. In such view of the matter, this Court does not find any infirmity either in the conviction or sentence imposed on the accused and thus, this Criminal Revision stands dismissed. The trial Court is directed to secure the presence of the accused so that he can undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

asi/gya

To

1. The Additional Session Judge (Fast Track Court),
   Vellore.

2. The Public Prosecutor, High Court,
   Chennai - 600 104.

3. Inspector of Police,
   District Crime Branch,
   Vellore District.

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.83449

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